THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.12871 OF 2007

Date: 24-12-2007

Between:

Sri Venkateswara Swamy Temple,
Dornakal village and Mandal,
Warangal district rep.by its
Former Trust Member, K.Harinath … Petitioner

And

1.The Commissioner,
Endowments Department
Boggulakunta, Hyderabad
And others. … Respondents

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O R D E R:

Heard Sri V.V.N.Narayana Rao, the counsel representing petitioner, the learned G.P.for Endowments representing R1, R2 and R3, Sri G.Elesha, representing R-4 and Sri V.Ravikiran Rao, the counsel representing R.5.

2. Sri V.V.N.Narayana Rao, the learned counsel representing the writ petitioner had taken this Court through the affidavit filed in support of the petition and also the counter-affidavit and would submit that in the facts and circumstances of the case, the writ petition is to be allowed. The learned GP for Endowments would submit that in the light of the stand taken by R4, if any unauthorized constructions are being proceeded with by R5 within the temple premises, since it is a notified institution, the Officers concerned of the Department of Endowments would take appropriate action. Sri G.Elesha, the learned counsel representing R4 had taken this court through counter-affidavit of R4 and would submit that in the light of the same, no further orders would be passed. Sri V.Ravikiran Rao, learned counsel for R5 would submit that R5 in fact is not proceeding with any further constructions at all and hence there is no need to pass any order whatsoever in the present writ petition.

3. Heard the counsel.

4. Counter-affidavit of R5 had been filed.

5. This court ordered notice before admission on 13.7.2007 and on 17.9.2007 rule nisi was ordered.

6. The writ petition is filed for a writ of mandamus declaring the inaction on the part of the respondents 1 to 3 in not taking any steps to prevent the 5th respondent for making illegal constructions against the Agama Sastras and sentiments of the devotees of the petitioner as illegal and arbitrary and to pass further orders.

"The former trust member of Sri Venkateswara Swamy, Dornakal village, Warangal District, K.Harinath Babu, filed the present writ petition. It is stated that the devotees of Dornakal village have constructed the temple of Sri Venkateswara Swamy in the year 1957 out of their own funds and since then the devotees themselves maintain the temple till the temple is taken over by the Endowments Department under section 6(c)(II) of the A.P.Charitable and Hindu Religiious Institutions and Endowments Act, 1966. While things stood thus, the 3rd respondent was pleased to issue proceedings No.C/1080/89 dated 22.12.1989 constitute the Trust Board for a period of three years under sub section 2 of Section 15 of the Act. After expiry of the said period the 3rd respondent was pleased to constitute 5 member Trust Board on 22.9.1993. Thereafter, on 10.1.1990 the 3rd respondent has appointed Trust Board under the Chairmanship of one Sri Naga Bandi Sri Hari and an amount of Rs.1,18,000/- has been granted by the Endowments Department for renovation of the

subject temple from the Common Good Fund Committee. While so, the management of the petitioner temple has made an application to the 3rd respondent to register the subject temple under Section 43 of the Act and in pursuance of the same, on 8.7.1991 the 3rd respondent has addressed a letter to the then Chairman of the petitioner temple to submit the relevant records for forwarding the same to the higher authorities. Accordingly, the then Chairman of the petitioner temple has submitted relevant proposals for registration of the temple under Section 43 of the Endowments Act. On 31.7.1991 the 3rd respondent was pleased to forward the same to the Observer, Endowments Department, Mahabubabad Division. Accordingly, the relevant information and records were submitted as required by the Observer, Endowments Department, Mahabubabad. The petitioner submit that the first respondent again was pleased to accord sanction of an amount of Rs.1,16,800/- for reconstruction of Mandapam, construction of Garudalayam and Garbalayam. However, due to unavoidable reasons the developmental activities could not be taken place. While things so, the 3rd respondent again constituted the Trust Board to the petitioner temple vide its proceedings No.C/1438/92, dated 22.9.1993 wherein this deplonent is one of the Member of the Trust Board. While things so, the 5th respondent claiming to be Managing Committee of Sri Venkateswara Swamy temple and trying to make constructions under the name and style of Maheswari Seva Bhavan duly claiming that the petitioner temple is

under the supervision and management of Maheswari Seva Samaj. When the managing Trust Board of the petitioner temple prevented such construction, on the ground that the construction is taken place against Agama sastras and by virtue of the construction of Maheswari Seva Bhavan the structures of the petitioner temple is completely closed and sentiments of the devotees of the petitioner temple will be in serious jeopardize. It may not be out of place to mention that the said construction is also without permission from the 4th respondent gram planchayat. The 5th respondent samajam contrary to the sentiments of the devotees and contrary to the agama Sastras making constructions of Maheswari Seva Bhavan. It is also stated that the 5th respondent has filed the suit, O.S.No.46 of 1998 on the file of the Senior Civil Judge, Mahabubabad, against the members of the Trust Board of the petitioner temple for permanent injunction not to interfere into the affairs of Sri Venkateswara Swamy Vari Alayam at Dornakal under the management of Maheswari Seva Samaja, Dornakal without impleading the Endowments Department as one of the party defendant. The said suit was decreed exparte. In fact, the civil court has no jurisdiction to entertain the suit in view of the Section 87 of Endowments Act. However, the defendants in the suit have preferred appeal, A.S.No.2014 of 2006 on the file of the Prl.District Judge at Warangal and the same is pending for adjudication. He further stated that under the guise of the decree passed by the Senior Civil Judge, Mahabubabad, in O.S.No.46 of 1998, the 5th respondent is making constructions of Maheswari

Seva Bhavan. In this regard the devotees of the petitioner temple have made several oral and written representations to the respondents 1 to 3 and brought to their notice that the subject construction is being taken up by the 5th respondent against Agamasastras. Inspite of the same, the respondents 1 to 3 have not taken any action to prevent the 5th respondents for its illegal construction. However, the devotees have requested the 4th respondent as well as the District Panchayat Officer, Mahabubbad not to permit the construction of Maheswari Seva Bhavan and it is also without permission from the 4th respondent gram panchayat. Accordingly, the 4th respondent gram panchayat was pleased to address a letter to the 5th respondent to stop the construction of Maheswari Seva Bhavan. Upon the representation from the devotees the District Panchayat Officer, Mahabubabad vide its letter dated 31.3.2006 addressed to the 4th respondent to conduct enquiry and take necessary action. Accordingly, the 4th respondent has issued notice to the 5th respondent to stop the construction of the Maheswari Seva Bhavan. The petitioner submitted that for some time the 5th respondent has stopped for making construction of Maheswari Seva Bhavan. In this regard, the petitioner advised to submit that the Agama Sastras contain elaborate rules as to how the temple is constructed where the principle diety is to be consented where the other devathas are to be installed, where classes of worshippers are to attend and

worship, etc. Therefore, contrary to the agamasastras and also without their being any permission from the respondents 1 to 3 making construction of Maheswari Seva Bhavan by the 5th respondent is highly objectionable, illegal and against the sentiments of the devotees of the petitioner temple. The respondents 1 to 3 having failed to take any steps to prevent the 5th respondent for making constructions, the petitioner has no other alternative except to approach this Hon'ble High Court by way of filing the present writ petition, if this Hon'ble court is not interfered in the subject matter the petitioner in particular and the sentiments of the devotees of the petitioner temple in general will be jeopardize."

7. In the counter-affidavit of R4 it is stated that "the 5th respondent is a society made an application on 2.2.2006 seeking permission for construction in the open place of H.No.4-1-57 situated in Dornakal village. The contents of the application are the 5th respondent intend to construct Function Hall in the name and style of Venkatesh Balaji Mahesh Sadhan and requested the Gram Panchayat to grant permission. In pursuance of the above application, in pursuance of the application the respondent has issued a public notice on 2.2.2006 itself calling for the objections from the villagers with regard to seeking permission for construction of Function Hall by the 5th respondent. In the notsice it is specified that any objections from the villagers should submit to this respondent office within 15 days. Thereafter several

complaints had been received by the Gram Panchayat saying that not to grant permission to the 5th respondent society. In view of the above complaints on 21.3.2006 the Gram Panchayat committee has passed an unanimous resolution not to permit the 5th respondent for constructing the Function Hall in the house premises No.4-1-57 of Dornakal Village. Further it is stated that the 5th respondent has filed a suit in O.S.No.189 of 2006 on the file of Junior Civil Judge at Mahabubabad against the Panchayat Secretary of Dornakal village for declaration and permanent injunction. In which I.A.No.354 of 2006 seeking for interim injunction has been filed by the 5th respondent. In the above said suit the written statement has been filed and also counter-affidavit has been filed by this respondent denying the allegations leveled against this respondent. The above said proceedings are pending for adjudication. It is further submitted tht the respondent has appraised the above issues to the Divisional Panchayat Officer, Mahabubabad through proceedings Rc.No.241/GPD/2006 dated 14.4.2006, meanwhile some of the villagers also given a complaint against the 5th respondent society for raising the unauthorized constructions in the petitioner temple premises and in the complaint they sought a direction to stop the unauthorized construction. In pursuance of the above complaints the Divisional Panchayat Officer in proceedings Rc.No.212/2006/A1 dated 31.3.2006 issued directions to this respondent calling for the detailed remarks in this regard and also to take action against the

5th respondent for raising the unauthorized construction. Further it is stated that the 5th respondent started the unauthorized construction without obtaining valid permission from this respondent, which is mandatory according to the lay-out and building rules prescribed in G.O.Ms.No.67. In view of the above circumstances this respondent has instructed the 5th respondent not to proceed further with regard to illegal construction. The present writ petition is filed by the petitioner-temple represented by a Former Trust Board Member. It is further stated that the respondents also are initiating action against the 5th respondent for raising the illegal construction by the 5th respondent in the premises of the temple which is under Endowments Department."

8. These are the respective stands taken by the parties. As can be seen from the respective stands taken by the parties, there are certain factual controversies and it also appears that a civil proceeding is pending. However, the fact that the temple is a notified temple is not in serious controversy. When that being so, respondents 1, 2 and 3 being the officers of the Endowments Department are bound to protect the properties of the temple. However, it is pertinent to note the specific stand taken before this Court by the counsel representing R5 that R5 is not proceeding with any such constructions.

9. In the light of the same, the writ petition is disposed of with a direction to respondents 1, 2 and 3 to look into the grievance of the petitioner in relation to the unauthorized constructions in the temple premises, if any, and

do the needful in accordance with law.

10. The writ petition is, accordingly, disposed of. No order as to costs.

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P.S.NARAYANA,J

24th December, 2007.

PNV

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